IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.267 Of 2004.

Abdul Qayum & Others Vs.Noor Mohd. & Others.

Date Of Order ::: 26.10.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. R.P. Garg, Counsel for defendant-appellants.
Mr. M.M. Ranjan, Counsel for the plaintiff-respondents

By the Court :

Heard learned counsel for both the parties.

The plaintiff-respondent filed a suit for eviction, arrears of rent against the defendants, which was decreed by the Lower Court. Being aggrieved with the same an appeal was preferred by the defendant No.11, which was dismissed by the First Appellate Court also. Being aggrieved with the same, the present second appeal has been preferred on behalf of the defendant No.11.

Learned counsel for the defendant-appellants

Mr. R.P. Garg, contended that there was an objection in the written statement filed on behalf of the defendant Nos. 2 to 5 that Abdul Qayum, the defendant No.11 is in possession of the property, in dispute as a owner, therefore, an issue ought to have been framed in this regard and the same should have been decided by the Courts below. He further contended that the Courts below have committed a serious illegality in not framing and deciding the aforesaid point taken by the defendant Nos. 2 to 5 in their written statement, therefore, the judgment and decree passed by the Courts below be set aside.

I have considered the submissions of learned counsel for both the parties in the light of the findings of both the Courts below. The First Appellate Court in the impugned judgment dated 23.04.2004 has considered all the submissions of the defendant No.11 the appellant. The First Appellate Court has observed that the defendant Nos. 2 to 5 took a specific plea in the written statement that Abdul Qayum is the owner of the property, in dispute. Thereafter, the plaintiff moved an application under Order 1 Rule 10 of the C.P.C., which was allowed and the Abdul Qayum was

impleaded as defendant No.11 in the present suit. However, inspite of service of summons and number of opportunities granted to the defendant No.11, the written statement was not filed. Thereafter, an ex-parte order was passed against the defendant No.11 subsequently, an application was filed to set aside the ex-parte order against the defendant No.11. The learned Lower Court allowed the application and set aside the ex-parte order passed against the defendant No.11-appellant on payment of cost, but cost was not paid and ex-parte order was again restored. The defendant No.11 again filed an application to allow him to cross-examine the plaintiff's witnesses. The said application was also allowed. The cross-examination of plaintiff's witnesses was allowed only in respect of defence/plea taken in the written statement. However, the written statement of defendant No.11 was not on record, therefore, case was fixed for final arguments.

Learned counsel for the defendant-appellants could not point out any illegality or perversity in the judgment and decree passed by both the Courts below.

After considering the submissions of learned

counsel for both the parties as well as the finding of both the Courts below, I do not find any illegality or perversity in the impugned judgment passed by both the Courts below. The controversial issue relates to question of facts and there is a concurrent finding of facts by both the Courts below, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is accordingly dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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